

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

CRP.No. 767 of 2007()

AGAINST THE ORDER DATED 05/01/2007 IN EP.NO.15/2006 IN
OS.593/1997 of MUNSIFF COURT, CHITTUR

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REVN. PETITIONER: PETITIONER/DECREE HOLDER/PLAINTIFF

RAJAN @ RAJACHANDRAN NAIR,
S/O. BARGHAVI AMMA,RESIDING AT DEEPTHI,
KALLEKULANGARA, AKKATHETHARA VILLAGE,
PALAKKAD TALUK.

BY ADV. SRI.H.BADARUDDIN

RESPONDENT: RESPONDENT:JUDMENT DEBTOR/DEFENDANT

M.MOOSA,S/O. MUHAMMED KHANI RAWTHER,
RESIDING AT KADAMKURUSSI,MUTHALAMADA,
CHITTUR TALUK, PALAKKAD.

BY ADV. SRI.A.R.GANGADAS
SRI.M.A.SHAJI

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.767 of 2007

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Dated this the 18th day of October, 2007.

ORDER

This revision petition is preferred against the order of the Munsiff, Chittur in E.P.No.15 of 2006 in O.S.No.593 of 1997. The Execution Petition is one for detention of the judgment debtor in civil prison if he fails to pay the amount after notice. The decree holder contended that the judgment debtor is having five acres of land and has got an income of Rs.35,000/- from the property. It is also contended that he is purposefully evading payment. On the other hand, the judgment debtor would contend that he is not having any job or any income and he is suffering from ailments and therefore there is no means and he cannot be arrested.

2. PW1 and RW1 were examined and the court below found that the decree holder has not succeeded in proving that the judgment debtor has got landed properties or means to pay the decree debt and therefore, rejected the prayer for arrest. It is

true that in paragraphs 8 and 10 of the order, the court refers to a bond executed by the judgment debtor whereby he had offered a property as security and it is alleged that the said property has been sold by him in gross violation of the terms of the security bond. The court below held that the judgment debtor clandestinely alienated the property, which was offered as security against the terms of the security bond executed by him. The court also made it clear that since it is the breach of the conditions of the bond, the decree holder can very well proceed against the property to realise the decree debt.

3. But so far as means is concerned, the court found that there is no sufficient evidence to prove the means and therefore rejected the prayer for issuance of warrant. A perusal of the materials in the order would reveal the same.

Therefore, I do not find any error in the decision rendered by the court below and the Civil Revision Petition is dismissed.

M.N.Krishnan,
Judge.